84-799

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

M. FRENVILLE CO., INC. and RUDOLPH FRENVILLE, SR.,
Petitioners,

vs.

AVELLINO & BIENES, a Partnership,
Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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STATUTES INVOLVED

Four sections of the United States Code are reviewed herein, with various subsections thereof, together with one section of the Laws of the State of New York.

The first section of the United States Code, Section 362 of the Bankruptcy Code, 11 U.S.C. §362, is reprinted in its entirety in the Appendix to petitioners brief, with the pertinent subsections being reprinted in the "Statutes Involved" section of petitioners brief (Pb2-3), and is made a part hereof.

Section 502 of the Bankruptcy Code is reprinted in its entirety in the Appendix to petitioners brief and made a part hereof. The pertinent subsection of that section is:

"§502. Allowance of claims or interests.

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a partner in a partnership that is a debtor in a case under Chapter 7 of this title, objects.

Also applicable to the argument contained in the within Opposition to the Petition is subsection (a) of Section 501 of the Bankruptcy Code, which section is reprinted in its entirety herein:

"§501. Filing of proofs of claims or interests.

(a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

(b) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may may file a proof of such claim.

(c) If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim.

(d) A claim of a kind specified in section 502(f), 502(g), 502(h), or 502(i) of this title may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of filing of the petition.

Also applicable to the argument contained in the within Opposition to the Petition is Section 101 of the Bankruptcy Code, which section is reprinted in its entirety in the Appendix annexed hereto and made a part hereof. The pertinent subsections of that section are:

"§101 Definitions.

(4) "claim" means—

> (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured; . . .
>
> (9) "creditor" means—
>
> (a) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (b) entity that has a claim against the estate of a kind specified in section 502(f), 502(g), 502(h) or 502(i) of this title; or
>
> (c) entity that has a community claim;

The section of the Laws of the State of New York which is applicable to the argument contained in the within Opposition to the Petition is Section 1007 of the New York Civil Practice Code, N.Y. Civ. Prac. Law §1007, which is reprinted in it entirety, herein:

> "Section 1007. When third-party practice allowed.
>
> "After the service of his answer, a defendant may proceed against a person not a party who is or may be liable to him for all or part of the plaintiff's claim against him, by serving upon such person a summons and third-party complaint and all prior pleadings served in the action. A defendant serving a third-party complaint shall be styled a third-party plaintiff and the person so served shall be styled a third-party defendant. The defendant shall also serve a copy of such third-party complaint upon the plaintiff's attorney.

SUMMARY OF ARGUMENT

This Court should deny the Writ of Certiorari sought by petitioners. Petitioners have shown no special and important reason, pursuant to Rule 17 of the Rules of the Supreme Court of the United States or otherwise, for this Court to grant review of the present case. Petitioners challenge the Court of Appeals ruling arguing that the courts below did not abuse their discretion in refusing to grant relief from the automatic stay. This argument misses the point. In holding that the automatic stay, by its very terms, is inapplicable to the present case, the Court of Appeals specifically refused to consider whether relief from the stay was warranted. Moreover, in deciding that the respondent's claim and cause of action for indemnification and contribution arose post-petition, the Court of Appeals relied on state law. Petitioners neither challenge such reliance nor the Court's holding thereunder. Furthermore, the Court of Appeals ruling is in line with the policy behind the Bankruptcy Code. Congress has determined that only those claims which arise pre-petition can be discharged. A third-party action for contribution or indemnity may be commenced only after a defendant (in the present case respondent) serves his answer in the suit brought by the plaintiff (here, the banks). A claim for contribution or indemnification arises only after there is a right to payment. Respondent could not serve its answer pre-petition nor did it have a right to payment pre-petition. Therefore, the Court of Appeals correctly held that the automatic stay was inapplicable to respondent's third-party complaint.

REASONS FOR DENYING THE WRIT

THERE ARE NO SPECIAL AND IMPORTANT REASONS FOR GRANTING REVIEW OF THE PRESENT CASE.

In the instant case, the United States Court of Appeals for the Third Circuit has neither rendered a decision in conflict with a decision of another United States Court of Appeals on the same matter, decided a federal question in a way in conflict with a state court of last resort, so departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, decided an important question of federal law which should be settled by this Court, nor decided a federal question in a way in conflict with applicable decisions of this Court. See Rule 17 of the Rules of the Supreme Court of the United States. (Appendix B, 13a). Significantly, petitioners have made no allegations to the contrary.

The Court of appeals simply decided a narrow issue when it held that the automatic stay provision of §362 of the Bankruptcy Code is inapplicable to cases in which the acts of the debtor occurred before the filing of the bankruptcy petition yet the cause of action stemming from those acts arose post-petition. In holding that the claim and cause of action for indemnification and contribution arose post-petition, the Court of Appeals determined that such an action could not have been commenced until the primary action against the respondent had been brought and such a claim could not accrue until the time of payment of the judgment flowing from the underlying acts. Importantly, and as the Court of Appeals correctly held, the questions of when the claim and cause of action arose is "determined by reference to state law." (Pb

Appendix A, 11a). Petitioners have neither challenged such reliance on state law nor the holding thereunder as error.

THE AUTOMATIC STAY PROVISION OF §362 OF THE BANKRUPTCY CODE IS INAPPLICABLE IN THE PRESENT CASE.

The question presented is whether the automatic stay provision of §362 of the Bankruptcy Code is inapplicable to the matter on appeal due to the fact that the claim and cause of action of respondent arose after the commencement of the bankruptcy proceedings. As the Court of Appeals correctly noted, the Bankruptcy Code "requires that the proceeding stayed 'was or could have been commenced' before the filing or that the proceeding was based on a claim that arose pre-petition." (Pb Appendix A, 6a). See also *In re York*, 13 B.R. 757, 758 (Bankr. D. Me. 1981); 11 U.S.C. §362(a)(1). (See Pb Appendix F, 52a for text of §362(a)). Because a third-party action for contribution or indemnity may be commenced at the time the defendant (in the present case respondent) serves his answer in the suit brought by the plaintiff (here, the banks), but not before, *Blum v. Good Humor Corp.*, 394 N.Y.S. 2d 894 (N.Y. App. Div. 1977); *Taca International Airlines, S.A. v. Rolls Royce of England, Ltd.*, 263 N.Y.S. 2d 260, 272 (N.Y. Sup. Ct. 1965), the Court of Appeals correctly held that respondent's third-party action "cannot be stayed by the 'proceeding' language of §362(a)(1)." (Pb Appendix A, 8a).

The applicability of the automatic stay, therefore, depends on whether respondent's claim arose pre-petition. As the Court of Appeals held, for a claim to exist "the threshold requirement requirement of a claim must first be met—there must be a 'right to payment'." (citing

Code §101(4)). (Pb Appendix A, 9a; See also Appendix A, 1a, for complete text of §101). As another court noted, the definition of "claim" contained in §101(4) "may not confer the status of a claimant upon a petitiong creditor who has no right to payment." *In re First Energy Leasing Corp.*, 38 B.R. 577, 581 (Bankr. E. D. N. Y. 1984). The crucial issue is, thus, when did respondent's right to payment arise

A claim for contribution or indemnification does not accrue at the time of commission of the underlying act, but rather at the time of the payment of the judgment flowing from the act. *Blum, supra.; Taca, supra.* The New York Civil Practice Code, however, permits the defendant (in the present case respondent) to institute a third-party claim against the party who may be liable to him for all or part of the plaintiff's (here, the banks) claim after service of his answer. N.Y. Civ. Prac. Law §1007 (See Rb 3 for complete text of §1007); See *Burgundy Basin Inn v. Watkins Glenn Grand Prix Corp.*, 379 N.Y.S. 2d 873, 880 (N.Y. App. Div. 1976) ("Technically a claim for indemnity does not arise until the prime obligation to pay has been established. . . . Nevertheless, for the sake of fairness and judicial economy [§1007] allows third-party actions to be commenced in certain circumstances before they are technically ripe, so that all parties may establish their rights and liabilities in one action."). Therefore, respondent did not have a claim for indemnification or contribution until the banks filed their suit. Thus, as the Court of Appeals held, "by its very terms, the automatic stay provision of §362(a) is inapplicable" to respondent's third-party action. (Pb Appendix A, 12a).

Furthermore, the Court of Appeals ruling is in line with the policy behind the Bankruptcy Code. As the

Court of Appeals stated: "Congress has determined that only those claims which arise pre-petition can be discharged in a Chapter Seven proceeding. Since claims arising post-petition are not dischargeable, there is no compelling reason to stay judicial proceedings predicated on such claims." (Pb Appendix A, 13a). See also, *Turner Broadcasting System, Inc. v. Sanyo Electric, Inc.*, 33 B.R. 996, 100 (N.D. Ga. 1983); *In re Shenberg*, 433 F.Supp. 677, 680 (N.D. Ill. 1977); Kennedy, *The Automatic Stay in Bankruptcy*, 11 U. Mich. J. L. Ref. 177 (1978).

SINCE THE AUTOMATIC STAY, BY ITS OWN TERMS, HAS BEEN HELD INAPPLICABLE BY THE COURT OF APPEALS, THE QUESTION OF WHETHER RELIEF FROM THE STAY IS WARRANTED IS NOT AN ISSUE IN THE PRESENT CASE.

Petitioners challenge the Court of Appeals ruling on the grounds that the Bankruptcy Court did not "abuse its discretion" in refusing to "lift" the automatic stay. (See Pb 13-14). While this argument might be interesting, it is inapplicable to the present case and simply misses the point. In its ruling, the Court of Appeals specifically refused to consider whether the stay should have been lifted: "Since we hold that the automatic stay, by its own terms, is inapplicable in the present case, we need not reach the issue of whether relief from the stay was warranted." (Pb Appendix A, 4a).

Likewise, petitioners' references to the opinions below are also inapplicable and besides the point. The statement from the portion of the Bankruptcy Court's written opinion cited by petitioners (See Pb 10) was made solely in the context of the argument that "the stay should be

lifted," (Pb Appendix E, 50a), not in the context of the argument that "the automatic stay does not apply on the facts at bar," which argument was dealt with by the Bankruptcy Court a page earlier in its opinion. (See Pb Appendix E, 49a). Similarly, petitioners' quotation of a portion of the District Court's oral opinion (Pb 10) is inapposite as it was made in the context of whether "relief from the automatic stay provision" is warranted. (Pb Appendix B, 30a).

Finally, petitioners' reference to Code §502 also misses the point and is inapplicable. Section 502 applies to claims which are "filed under section 501 of this title." (See Rb 1 for text of §502(a); See Pb Appendix G for complete text of §502). Section 501 provides that only a "*creditor* . . . may file a proof of claim." (emphasis added) (See Rb 2 for complete text of §501.) A creditor is defined as one who "has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. §101(9). (See Rb 2 for text of §101(9); See Appendix A for complete text of §101). As respondent did not have a claim for indemnification or contribution until the banks filed their suit (See Rb 9 and cases cited therein), which occurred after the order for relief concerning the debtor, Code §502 is simply inapposite.

CONCLUSION

For all of the foregoing reasons, case law and statutory authority, it is respectfully submitted to this Court that the decision of the United States Court of Appeals for the Third Circuit should not be reviewed by this Court.

Respectfully submitted,

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APPENDIX

APPENDIX A

COMPLETE TEXT OF SECTION 101 OF THE BANKRUPTCY CODE, 11 U.S.C. §101.

§101. *DEFINITIONS*

In this title—

(1) "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized;

(2) "affiliate" means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity with-

out sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or all or substantially all of the property of the debtor under a lease or operating agreement;

(3) "attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law;

(4) "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

(5) "commodity broker" means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of

this title, with respect to which there is a customer, as defined in section 761(9) of this title;

(6) "community claim" means claim that arose before the commencement of the case concerning a debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case;

(7) "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose;

(8) "corporation"—

(A) includes—

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

(B) does not include limited partnership;

(9) "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of

a kind specified in section 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim;

(10) "custodian" means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors;

(11) "debt" means liability on a claim;

(12) "debtor" means person or municipality concerning which a case under this title has been commenced;

(13) "disinterested person" means person that—

(A) is not a creditor, in equity security holder, or an insider;

(B) is not and was not an investment banker for any outstanding security of the debtor;

(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

(E) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, for any other reason;

(14) "entity" includes person, estate, trust, governmental unit;

(15) "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph;

(16) "equity security holder" means holder of an equity security of the debtor;

(17) "farmer" means person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was com-

menced from a farming operation owned or operated by such person;

(18) "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state;

(19) "foreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

(20) "foreign representative" means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;

(21) "governmental unit" means United States; State; Commonwealth; District; Territory, municipality; foreign state; department, agency or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government;

(22) "indenture" means mortgage, deed of trust, or indenture under which there is outstanding a security, other than a voting-trust certificate, consitituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor;

(23) "indenture trustee" means trustee under an indenture;

(24) "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stock broker or a commodity broker;

(25) "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(v) partnership in which the debtor is a general partner;

(iv) partnership in which the debtor is a general partner;

(v) general partner in the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner of the debtor;

(ii) relative of a general partner in, gen-

eral partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor;

(26) "insolvent" means—

(A) with reference to an entity other than a partnership, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title; and

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in subparagraph (A)(ii) of this paragraph, over such partner's separate debts;

(27) "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

(28) "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation;

(29) "municipality" means political subdivision or public agency or instrumentality of a State;

(30) "person" includes individual, partnership, and corporation, but does not include governmental unit;

(31) "petition" means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title;

(32) "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee;

(33) "railroad" means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier;

(34) "relative" means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree;

(35) "security"—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933 (15 U.S.C. 77a et seq.), or is exempt under section 3(b) of such Act (15 U.S.C. 77c(b)) from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation

in, temporary or interim certificate for, receipt for, or warrant or gith to subscribe to or purchase or sell, a security; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction as defined in 761(13) of this title;

(iii) commodity futures contract or forward commodity contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate specified in clause (xii) of subparagraph (A) of this paragraph that is not the subject of such a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) from the requirement to file such as statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered;

(36) "security agreement" means agreement that creates or provides for a security interest;

(37) "security interest" means lien created by an agreement;

(38) "statutory lien" means lien arising solely by

force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute;

(39) "stockbroker" means person with respect to which there is a customer, as defined in section 741(2) of this title, engaged in the business of effecting transactions in securities—

(A) for the accounts of others; or

(B) with members of the general public, from or for such person's own account; and

(40) "transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest.

APPENDIX B

COMPLETE TEXT OF RULE 17 OF THE RULES OF THE UNITED STATES SUPREME COURT

RULE 17. CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari

to review judgments of the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.